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15 *Class Counsel for Plaintiffs*
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16 **UNITED STATES DISTRICT COURT**
 17 **NORTHERN DISTRICT OF CALIFORNIA**
 18 **SAN FRANCISCO DIVISION**

20 MARC OPPERMAN, et al.,
 21 Plaintiffs,
 22 v.
 23 KONG TECHNOLOGIES, INC., et al.
 24 Defendants.

Case No. 13-cv-00453-JST

CLASS ACTION

**STIPULATED MOTION FOR
 ADMINISTRATIVE RELIEF RE CY PRES
 DISTRIBUTION PURSUANT TO
 SETTLEMENT AGREEMENT;
 [PROPOSED] ORDER**

THIS DOCUMENT ALSO RELATES TO:
Hernandez v. Path, Inc., No. 12-cv-1515-JST
 (collectively, the “Related Actions”)

1 **TO THE COURT, ALL PARTIES, AND COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that all parties to the class action settlement, through their
3 counsel of record, STIPULATE pursuant to Civil Local Rules 7-11 and 7-12 that pursuant to
4 Section 7.10.4 of the Settlement Agreement approved by the Court, the Settlement Administrator
5 should be authorized at this time to distribute uncashed settlement distributions to the Electronic
6 Frontier Foundation.

7 WHEREAS, Paragraph 7.10.1 of the Settlement Agreement (ECF No. 884) provides that
8 if unclaimed for 90 days undeliverable electronic payments shall be treated as uncashed
9 settlement distributions.

10 WHEREAS, Paragraph 7.10.3 of the Settlement Agreement (ECF No. 884) provides that
11 checks sent by the Settlement Administrator that are not cashed within 90 days are void and will
12 be treated as uncashed settlement distributions.

13 WHEREAS, Paragraph 7.10.4 of the Settlement Agreement provides “The SETTLEMENT
14 ADMINISTRATOR shall distribute any uncashed settlement distributions from the NET
15 SETTLEMENT PROCEEDS on a cy pres basis to the Electronic Frontier Foundation after first
16 receiving permission of the Court to do so.”

17 WHEREAS, settlement payments were made the first week of June, 2018. The 90 day
18 period elapsed by the end of the first week of September.

19 WHEREAS, less than a dozen individuals have contacted class counsel since September
20 2018 and requested new checks or electronic codes, and those requests have been accommodated
21 by the Settlement Administrator despite being late.

22 WHEREAS, the Settlement Administrator’s work is done, except for the cy pres
23 distribution, and it desires to close its files before the end of the calendar year to avoid additional
24 tax expense.

25 WHEREAS, the Settlement Administrator reports to class counsel that 99.64% of the
26 electronic payments and 84.88% of the check payments have been cashed. There are
27 \$153,372.35 in unclaimed funds subject to the cy pres provision of the settlement.
28

1 THEREFORE, it is hereby stipulated and agreed by the parties that:

2 1. The Court should instruct KCC to distribute the remaining uncashed funds to the
3 Electronic Frontier Foundation as provided by the Settlement Agreement approved by the Court
4 on March 27, 2018.

5 IT IS SO STIPULATED.

6 Dated: November 6, 2018

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1 Dated: November 6, 2018

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19 Dated: November 6, 2018

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Dated: November 6, 2018

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**ATTORNEYS FOR DEFENDANT TWITTER,
INC.**

[PROPOSED] ORDER

PURSUANT TO STIPULATION and the terms of the Settlement Agreement approved by the Court, the Settlement Administrator is authorized to distribute uncashed settlement distributions to the Electronic Frontier Foundation and thereafter to close its files on this matter.

IT IS SO ORDERED.

Dated: _____, 2018

THE HONORABLE JON S. TIGAR
United States District Judge

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ATTESTATION

I attest that concurrence in the filing of this document has been obtained from the other signatories listed above.

Dated: November 6, 2018

KERR & WAGSTAFFE LLP

By: /s Michael von Loewenfeldt
Michael von Loewenfeldt